

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA, :  
v. : Case No. 3:08-cr-18-KRG-KAP  
HENRY J. LOGAN, :  
Movant, :  
:

Memorandum Report and Recommendation

More than a year after the Court dismissed his motion to vacate sentence, Henry Logan has filed a motion to vacate that judgment, at docket no. 129. The only possible basis for a motion under Fed.R.Civ.P. 60 is subsection (b)(4), not (b)(5) as Logan suggests; to the extent Logan relies on subsection (d)(1), any new "independent action" under that subsection would have to be considered a new motion to vacate, and Logan would have to comply with the provisions of 28 U.S.C. §§ 2244 and 2255 to file a second or subsequent motion to vacate.

Considering Logan's motion to vacate the judgment as one under subsection (b)(4), I recommend that it be denied because the motion was not filed within a reasonable time, see Fed.R.Civ.P.60(c)(1), and because it is meritless. Logan claims that because the Court did not follow the Miller notice procedure the Court should vacate the judgment at docket no. 124. The reason no Miller notice was issued was explained in my Report and Recommendation at docket no. 121. Logan filed objections at docket no. 122, not mentioning his new claim that because the Court did not follow the Miller notice procedure the Report and Recommendation should be rejected. The practical effect of

granting Logan's motion would be to hold that following the Miller notice procedure, even when inapposite, is necessary to a valid judgment. That is incorrect.

Pursuant to 28 U.S.C. § 636(b)(1), the parties are given notice that they have fourteen days to serve and file written objections to this Report and Recommendation.

DATE: April 18, 2013

  
Keith A. Pesto,  
United States Magistrate Judge

Notice to counsel of record by ECF and by U.S. Mail to:

Henry Logan, Reg. No. 11253-068  
F.C.I. Cumberland  
P.O. Box 1000  
Cumberland, MD 21501